

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
PASSLOGIX

v.

Civ. Action No. 08-CV-10986

2FA TECHNOLOGY, LLC
et al.

DEFENDANTS 2FA
TECHNOLOGY LLC'S AND 2FA
INC.'S INITIAL DISCLOSURES
PURSUANT TO RULE 26

----- X

Defendants 2FA LLC and 2FA Inc., and the Counterclaimants make the following disclosures to defendants pursuant to Rule 26(a)(1) Fed.R.Civ.P.

A. Individuals likely to have discoverable information:

The following individuals are likely to have discoverable information regarding the subjects described relevant to disputed facts alleged with particularity in the pleadings:

1. Greg Salyards
930 S. Bell Boulevard, Suite 402
Cedar Park, Texas 78613.

Mr. Salyards is the Managing Director of 2FA Technology LLC, and has an intimate knowledge of 2FA's relationship with Passlogix.

2. Shaun Cuttill
930 S. Bell Boulevard, Suite 402
Cedar Park, Texas 78613.

Mr. Cuttill is the Technology Director of 2FA Technology LLC, and has an intimate knowledge of 2FA's relationship with Passlogix.

B. Documents.

The following are documents in the possession of the Defendants that are relevant to disputed facts alleged with particularly in the pleadings. All documents are available for inspection and copying at Defendants' office in Austin Texas.

1. 12/24/2008 - Amended Complaint
2. 12/19/2008 - Complaint
3. 12/15/2008 - Breach and Termination Notice
4. 12/10/2008 - 2FA audit offer and terms
5. 12/9/2008 - Don G. email
6. 12/9/2008 - Salyards email to Sun
7. 12/3/2008 - Salyards response to Bay
8. 12/3/2008 - Salyards email to Greg Lee
9. 12/1/2008 - Salyards email to Bay Medical
10. 12/1/2008 - Sun email to Salyards and HID
11. 11/26/2008 - Greg Lee invitation 2FA
12. 11/25/2008 - 2FA proposal to BHSF
13. 11/25/2008 - Salyards email and no-cost upgrade offer to Sun
14. 11/24/2008 - POC proposal to GCA
15. 11/20/2008 - Don G. email
16. 11/21/2008 - Cuttill email to Manza
17. 11/17/2008 - Baptist Health email to 2FA
18. 11/17/2008 - Cuttill email to Don G.
19. 11/13/2008 - Cuttill email to Don G.

20. 11/07/2008 – Salyards notification to Passlogix

21. 11/7/2008 – Don G. email

22. 11/05/2008 – Don G. attestation

23. 11/04/2008 – Salyards email to Passlogix

24. 11/3/2008 – Cuttill email to Don G.

25. 11//1/2007 – Passlogix email

26. 10/29/2008 – 2FA Installation and configuration

27. 10/24/2008 – License Agreement, Amendment D

28. 10/24/2008 – Tony W. email

29. 10/23/2008 – Passlogix email requesting source code escrow

30. 10/23/2008 – Cuttill email

31. 10/23/2008 – Accounting spreadsheet

32. 10/22/2008 – Tony W. email with Cuttill response

33. 10/22/2008 – Cuttill email to Don G.

34. 10/22/2008 – Passlogix requests for support the 2FA product

35. 10/15/2008 – Tony W. email

36. 10/07/2008 – License Agreement, Amendment C

37. 10/6/2008 – Cuttill email to Don G.

38. 10/6/2008 – Accounting reconciliation report

39. 9/10/2008 – Don G. email to Cuttill.

40. 9/10/2008 – Salyards email to Don G.

41. 9/10/2008 – Don G. email to Cuttill

42. 9/9/2008 – Cuttill email

- 43. 9/9/2008 – Cuttill email
- 44. 9/4/2008 – Draft reseller agreement
- 45. 8/29/2008 – Tony W. email, with attachments
- 46. 8/25/2008 – Cuttill email
- 47. 8/25/2008 – Salyards email to Cuttill.
- 48. 8/19/2008 – Salyards email
- 49. 8/08/2008 – License Agreement, Amendment B
- 50. 8/5/2008 – Amendment B revision
- 51. 7/22/2008 – Passlogix modification to Amendment B
- 52. 7/17/2008 – Salyards email
- 53. 7/16/2008 – Ben Bailey email.
- 54. 7/14/2008 – Marc B. email
- 55. 7/6/2008 – Passlogix email
- 56. 7/3/2008 – Passlogix email
- 57. 6/28/2008 – Cuttill email.
- 58. 6/20/2008 – Salyards email
- 59. 6/19/2008 – Salyards email
- 60. 6/12/2008 – Marc B. email
- 61. 6/9/2008 – Salyards detailed product path
- 62. 5/13/2008 – OEM License Agreement with HID
- 63. 5/7/2008 – Passlogix email
- 64. 4/16/2008 – RC for v-GO CM 7.0
- 65. 4/10/2008 – Cuttill email

- 66. 3/31/2008 – Passlogix email
- 67. 3/28/2008 – Passlogix blog
- 68. 3/14/2008 – Cuttill email
- 69. 3/13/2008 – Burton analyst speculation
- 70. 3/12/2008 – IBM announcement
- 71. 3/12/2008 – Scott Bonnell email
- 72. 3/5/2008 – 2FA delivers Beta 2 for CM 7.0
- 73. 2/29/2008 – Cuttill email
- 74. 2/29/2008 – Marc B email
- 75. 2/28/2008 – Passlogix email
- 76. 2/26/2008 – Cuttill email
- 77. 2/26/2008 – Passlogix Press Release
- 78. 2/19/2008 – 2FA assists with RFP
- 79. 2/18/2008 – 2FA follow-up
- 80. 2/12/2008 – Passlogix email
- 81. 2/6/2008 – Cuttill email
- 82. 2/1/2008 – Passlogix accounting
- 83. 1/15/2008 – Matt B. email
- 84. 1/11/2008 – Salyards email
- 85. 1/11/2008 – Salyards email
- 86. 1/10/2008 – Passlogix email
- 87. 1/08/2008 – HID payment to 2FA
- 88. 1/08/2008 – Salyards email

89. 1/07/2008 – Passlogix email
90. 1/06/2008 – Zurich email
91. 1/04/2008 – Termination notice
92. 1/04/2008 – 2FA email
93. 1/03/2008 – Passlogix proposal for Amendment B
94. 12/21/2008 – Passlogix request for quote
95. 12/20/2008 – Scott Bonnell note
96. 12/20/2007 – ZFS card quotation
97. 12/17/2007 – SC Magazines Look Forward Article
98. 12/13/2007 – Passlogix request for a quote
99. 12/10/2007 – McDonald’s notification
100. 12/8/2007 – Zurich RFP
101. 12/6/2007 – 2FA email
102. 12/5/2007 – Salyards email
103. 12/3/2007 – Salyards email and copy of notice
104. 11/29/2007 – Meeting notes
105. 11/26/2007 – 2FA email
106. 11/24/2007 – Passlogix announcement
107. 11/15/2007 – Passlogix announcement
108. 11/12/2007 – Test plan
109. 11/09/2007 – Gemalto email
110. 11/8/2007 – 2FA email
111. 11/6/2007 – Salyards email

112. 11/6/2007 – Passlogix at Baptist Health.
113. 11/5/2007 – Salyards email to Passlogix
114. 11/5/2007 – Salyards email to Passlogix
115. 11/5/2007 – Scott Bonnell emails and responses
116. 11/2/2007 – Passlogix announcement
117. 11/1/2007 – Passlogix announces that SC Magazine selected v-GO CM for its prestigious “Look Forward” honor
118. 10/30/2007 – Passlogix requests for reader quotation
119. 10/29/2007 – Passlogix email
120. 10/25/2007 – Passlogix email
121. 10/22/2007 – Passlogix announcement
122. 10/17/2007 – Cuttill email
123. 10/16/2007 – Tony W email
124. 10/11/2007 – Passlogix email
125. 10/11/2007 – Stephane Fymat email
126. 10/5/2007 – Salyards email
127. 10/4/2007 – Passlogix email
128. 10/1/2007 – Passlogix draft of a presentation
129. 10/1/2007 – Passlogix draft of a presentation
130. 10/1/2007 – SC Magazine report
131. 9/29/2007 – Scott Bonnell email
132. 9/26/2007 – HID deliverables.
133. 9/20/2007 – Passlogix email

134. 9/20/2007 – 2FA email
135. 9/13/2007 – Scott Bonnell email
136. 9/13/2007 – Passlogix email
137. 9/8/2007 – Salyards email
138. 9/7/2007 – Passlogix email
139. 9/7/2007 – Cuttill email
140. 9/5/2007 – Product plan
141. 8/30/2007 – Passlogix email
142. 8/10/2007 – 2FA code level assistance
143. 8/9/2007 – Passlogix email
144. 8/6/2007 – Passlogix email
145. 8/6/2007 – List of past due invoices
146. 8/4/2007 – 2FA email
147. 7/11/2007 – Passlogix email
148. 7/10/2007 – Passlogix email
149. 7/10/2007 – Salyards email
150. 7/5/2007 – Passlogix presentation.
151. 7/5/2007 – 2FA email
152. 6/14/2007 – Salyards email
153. 6/14/2007 – Passlogix email
154. 6/12/2007 – 2FA email
155. 6/6/2007 – Salyards email
156. 6/6/2007 – Passlogix email

157. 6/1/2007 – 2FA email
158. 4/1/07 – Passlogix email
159. 5/29/2007 – Passlogix email
160. 5/18/2008 – 2FA email
161. 5/16/2007 – Salyards email
162. 5/7/2007 – 2FA email
163. 5/3/2007 – Passlogix email
164. 5/3/2007 – Salyards email
165. 4/26/2007 – RSA announcement
166. 4/10/2007 – 2FA email
167. 3/29/2007 – Passlogix email
168. 3/21/2007 – Passlogix email
169. 3/14/2007 – Passlogix email
170. 3/27/2007 – Salyards email
171. 3/15/2007 – Passlogix email
172. 3/11/2007 – 2FA new release
173. 3/8/2007 – Passlogix email
174. 3/8/2008 – 2FA email
175. 3/7/2007 – Passlogix notice
176. 3/1/2007 – License Agreement, Amendment A
177. 3/1/2007 – 2FA email
178. 2/27/2007 – Cuttill email
179. 2/26/2007 – 2FA email

180. 2/26/2007 – 2FA financial analysis for Amendment A.
181. 2/21/2007 – 2FA email.
182. 2/15/2007 – Passlogix email
183. 2/8/2007 – Salyards email
184. 2/7/2007 – Passlogix email
185. 2/6/2007 – Marc Manza email and response
186. 2/2/2007 – Passlogix email
187. 2/1/2007 – 2FA email
188. 1/31/2007 – Passlogix email
189. 1/25/2007 – Cuttill information re passive-proximity
190. 1/18/2007 – 2FA email
191. 1/17/2007 – Cuttill email
192. 1/11/2008 – Passlogix email
193. 1/9/2007 – 2FA letter to Passlogix
194. 1/8/2007 – Salyards email
195. 1/8/2007 – Salyards email
196. 1/5/2007 – 2FA proposal
197. 1/3/2007 – Cuttill email
198. 12/30/2006 – Passlogix email
199. 12/28/2006 – Cuttill email
200. 12/27/2006 – Annual roll-up of ICR issues., includes development and business development issues
201. 12/27/2006 – 2FA email

- 202. 12/26/2006 – 2FA email
- 203. 12/22/2006 – Concerns with commercial terms with regard to passive-proximity support
- 204. 12/21/2006 – Cuttill email
- 205. 12/18/2008 – 2FA email
- 206. 12/7/2006 – Passlogix email
- 207. 12/7/2006 – Passlogix email
- 208. 12/15/2006 – Cuttill email
- 209. 12/8/2006 – 2FA email
- 210. 12/1/2006 – Passlogix email and response
- 211. 11/29/2006 – Passlogix email
- 212. 11/16/2006 – 2FA price list
- 213. 11/15/2006 – Passlogix email
- 214. 11/13/2006 – Passlogix email
- 215. 10/31/2006 – 2FA email
- 216. 10/27/2006 – Bonnell email
- 217. 10/26/2006 – Passlogix email
- 218. 10/20/2006 – Passlogix email
- 219. 10/20/2006 – 2FA email
- 220. 10/16/2006 – Stephan Fymat email
- 221. 10/2/2006 – 2FA email
- 222. 9/29/2006 – Passlogix email
- 223. 9/29/2006 – 2FA email

224. 9/28/2006 – Delivery of v-GO CM product path to 2FA.
225. 9/28/2006 – Salyards email.
226. 9/28/2006 – Passlogix email
227. 9/28/2006 – Cuttill email
228. 9/21/2006 – Passlogix email
229. 9/19/2006 – Salyards email
230. 9/18/2006 – Passlogix email
231. 9/11/2006 – Bug report
232. 9/10/2006 – Ottawa email
233. 9/6/2006 – Passlogix email
234. 9/5/2006 – Stephan Fymat email
235. 9/5/2006 – Stephan Fymat email
236. 8/8/2006 – Bonnell email
237. 7/31/2006 – 2FA email
238. 7/20/2006 – 2FA email
239. 7/20/2006 – Passlogix email
240. 7/17/2006 – Product schedule
241. 7/13/2006 – CPS Energy bid
242. 7/11/2006 – Passlogix confirms delivery of v-GO code drop.
243. 7/7/2006 – Scott Bonnell email
244. 7/7/2006 – 2FA email
245. 7/1/2006 – Alpha code drop
246. 6/23/2006 – Passlogix email

- 247. 6/20/2006 – CM Architecture and roadmap
- 248. 6/14/2006 – Passlogix announcement message
- 249. 6/14/2006 – Oracle announces relationship with Passlogix
- 250. 6/12/2006 – Passlogix announces the release of v-GO CM
- 251. 6/5/2006 – Passlogix presentation
- 252. 5/31/2006 – Scott Bonnell marketing message
- 253. 5/23/2006 – 2FA confidential document to Passlogix engineering
- 254. 4/25/2006 – License Agreement
- 255. 4/23/2006 – Marc B. email
- 256. 4/18/2006 – 2FA email
- 257. 4/11/2006 – 2FA email
- 258. 3/11/2006 – Passlogix email
- 259. 3/10/2006 – Draft of the initial term sheet
- 260. 3/10/2006 – NDA
- 261. 3/6/2006 – First contacts are made between 2FA and Passlogix
- 262. 2/3/2006 – IBM announcement

Other documents available for inspection and copying are design documents, developer notes, implementation documents, bug tracking notes, RFPs, and records for travel expenses.

C. Computation of Damages

See attachment A for an assessment of damages.

D. Insurance Agreements

The Travelers Insurance policy is available for copying and inspection.

Dated: March 12, 2009

LAURENCE SINGER



Laurence Singer (LS 4250)
1629 K Street NW, Suite 300
Washington D.C., 20006
646 327-8772
Counsel Pro Hac Vice

ATTACHMENT A

Explanation of Calculation of Damages – These calculation of damages are preliminary only, and are those so far known by the Defendants.

1. Overview

| Cause | Total |
|------------------------|----------------------------------|
| First Cause of Action | \$ 5,383,209.48 |
| Second Cause of Action | \$ 9,482,000.00 |
| Third Cause of Action | \$ 6,249,600.00 |
| Fourth Cause of Action | \$ 17,100,000.00 |
| Fifth Cause of Action | \$ 10,440,000.00 |
| Interest | \$ 1,470,591.62 |
| Punitive Damages | <i>To be determined by court</i> |
| Total | \$ 50,125,401.10 |

1. First Cause of Action: Damages arising from Passlogix's breach of contract.

2.1 *Contracted Royalties 2007*

Passlogix was responsible for paying initially agreed minimum royalties, and had Passlogix been vigilant in pursuing opportunities, the amount due 2FA would have been greater than minimum royalties.

Amount: \$ 500,000.00

2.2 *Contracted Royalties 2008*

Passlogix was responsible for paying initially agreed minimum royalties, and had Passlogix been vigilant in pursuing opportunities, the amount due 2FA would have been greater than minimum royalties.

Amount: \$ 1,000,000.00

2.3 *Contracted Royalties 2009*

Passlogix was responsible for paying initially agreed minimum royalties, and had Passlogix been vigilant in pursuing opportunities, the amount due 2FA would have been greater than minimum royalties.

Amount: \$ 1,200,000.00

1.4 *Contracted Royalties 2010*

Passlogix was responsible for paying initially agreed minimum royalties, and had Passlogix been vigilant in pursuing opportunities, the amount due 2FA would have been greater than minimum royalties.

Amount: \$ 1,400,000.00

2.5 *Customization Fee 'b'*

2FA fulfilled its contractual obligations to Passlogix. Passlogix lack of vigilance, failure to pursue sales opportunities and improper accounting practices accounted solely to Passlogix not achieving the contracted amounts.

Amount: \$ 91,334.00

2.6 *Customization Fee 'c'*

2FA fulfilled its contractual obligations to Passlogix. Passlogix lack of vigilance, failure to pursue sales opportunities and improper accounting practices accounted solely to Passlogix not achieving the contracted amounts.

Amount: \$ 106,555.00

2.7 *Resource Utilization Fees 2006*

Passlogix misutilized 2FA personnel and required professional services and development far beyond the contracted terms. This amount represents the contracted rate between 2FA

and Passlogix of \$409.00 per day for 8 resources for 22 days a month for 6 months in 2006.

Amount: \$ 431,904.00

2.8 *Resource Utilization Fees 2007*

Passlogix misutilized 2FA personnel and required professional services and development far beyond the contracted terms. This amount represents the contracted rate between 2FA and Passlogix of \$409.00 per day for 8 resources for 22 days a month for 8 months in 2007.

Amount: \$ 575,872.00

2.9 *Amendment C Termination Terms*

Agreed terms of termination as stated in Amendment C of the Agreement not already covered in this section. These items are covered in the notification of breach and termination.

Amount: \$ 77,544.48

3. Second Cause of Action

3.1 *Not Pursuing Sale to Its Pipeline*

Passlogix told 2FA that 500,000 users were prepared to purchase the Software, having pre-sold other licenses for when the Software was ready. Passlogix never pursued the sale of the licenses, and further went to many of these users suggesting they not purchase the Software; assumes average cost of \$20/user (when purchased in volume); assumes 40% of gross revenue due to 2FA.

Amount: \$ 4,000,000.00

3.2 *Hardware Margin Lost*

Assume average of only \$5 gross margin hardware purchase per user above; 50% split of margin, per contract.

Amount: \$ 1,250,000.00

3.3 *Not Properly Pursuing 2FA Referrals*

2FA brought several opportunities to Passlogix, which Passlogix either would not follow up, or did not properly respond to the RFP's; Assumes 40% of 30% for opportunities that would have been brought through an OEM, 40% for opportunities that would have been direct; does NOT assume the 10% gross revenue referral payment due under contract

Amount: \$ 1,880,000.00

3.4 *Customary Maintenance and Support*

Software support traditionally at 20% of MSRP; assume just two years of lost contracts

Amount: \$ 2,352,000.00

3.5 *Dumping Software Below Market Value*

Sold for < \$1.74/seat, when agreed-upon market value was \$8/seat.

Amount: \$ 263,004.84

2. *Third Cause of Action*

4.1 *Bait-and-Switch Sales*

Passlogix purposefully swapped the 2FA solution with an alternative solution, leveraging 2FA's intellectual property and confidential information to help switch users to the alternative solutions; Assumes only the limited number of known/suspected cases that continued even after termination.

Amount: \$ 864,000.00

4.2 *Denial of Opportunity Sales*

Passlogix refused to promote sales of the Software or deliberately opted not to present 2FA's Software to its own customers, deciding of its own accord not to allow 2FA to compete; Assumes percentage of sales that went through channel partners during the term of the Agreement, and also the limited number of known direct cases.

Amount: \$ 3,600,000.00

4.3 *Customary Maintenance and Support*

Software support traditionally at 20% of MSRP; assume just two years of lost revenue

Amount: \$ 1,785,600.00

5. Fourth Cause of Action – misappropriation of 2FA's intellectual property and confidential information.

5.1 *New Sales of Passlogix v-GO AM since June 2007*

Estimate based upon Passlogix's published price list of \$15 per seat for an estimated 500,000 seats.

Amount: \$ 7,500,000.00

5.2 *Maintenance and Support of v-GO AM since June 2007*

Estimate based upon 20% of sale or 500,000 seats for two years.

Amount: \$ 3,000,000.00

5.3 *Continued Use of 2FA IP*

5.5 times minimum royalties as agreed to in contract.

Amount: \$ 6,600,000.00

6. Fifth Cause of Action

6.1 *Sun Microsystems*

Sun has indicated it does not desire now to bring the Software to the rest of the government(s) in Canada. Assumes 40% of \$8/user in volume + 20% Maintenance and Support for 2 years * 1M users

Amount: \$ 6,400,000.00

6.2 *IBM*

Damaged the relationship between 2FA and IBM; damages based upon companion gross revenue of SSO by IBM during that time and also of IBM's smart card sales during that time (using 40% of 30% of revenue)

Amount: \$ 1,440,000.00

6.3 *RSA*

Damages based on companion gross revenue of RSA-related sales after Passlogix's acquisition (using 40% of revenue)

Amount: \$ 1,400,000.00

6.4 *Oracle*

Passlogix intentionally interfered with opportunities to sale the Software through Oracle; Damages based on companion gross revenue of SSO by Oracle during that time (using 40% of 30% of revenue)

Amount: \$ 1,200,000.00

7. Interest

1.5% per month, compounded monthly, for every month after 30 days after notification of breach and termination (2 months' interest as of March 15)

Amount: \$ 1,470,591.62

8. Punitive Damages

Actions were intentional, wanton, and malicious, and continues these actions.

Amount: for court to determine

9. *Attorney's Fees, Court Expenses, Etc.*

Passlogix's initial lawsuit was frivolous, unfounded, and unwarranted.

Amount: for court to determine

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Defendants 2FA Technology LLC's and 2FA Inc.'s initial disclosures pursuant to rule 26(a)(1) was personally delivered on this 12th day of March 2009 to Hal S. Shaftel, Esq., 1585 Broadway, New York, New York 10036.



Laurence Singer